

Could and Should Have We Done Better in Dayton?

A Lesson on Peace-building and State-building¹

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The US sponsored peace talks in Dayton in autumn 1995 gathered representatives of the three constituent peoples of Bosnia and Herzegovina, the neighboring states, and an internationally composed five member Contact group - each of them trying to end a war, but also to promote some other specific interests and in that way influencing the outcome of negotiations. When estimating the Dayton Agreement ten years after, it seems that more international pressure should have been exerted on regional participants of the peace talks to accept a more viable constitutional framework for Bosnia and Herzegovina, with more competencies vested centrally and locally than in the entities. From the outset, more authority in implementation should have been granted to the High Representative, whose powers should have been transferred to the local population gradually, with clear dynamics and set benchmarks.

Key words: Dayton, Bosnia and Herzegovina, peace negotiations, constitutionalism, peace-building, state-building

1. Introduction

Almost all key Dayton players are, for one reason or another, out of political life. Five regional representatives initialed (or had to initial) the Dayton agreement: three of them as presidents of the Republic of Bosnia and Herzegovina (Muslim led, but internationally recognized), the Republic of Croatia, and the Republic of Serbia (representing also the Federal Republic of Yugoslavia, Montenegro, and all Serbs out of Serbia), while the other two of them were representing the two entities of Bosnia and Herzegovina (the Republic of Srpska and Federation). All three mentioned presi-

dents: President Tudman of Croatia, President Izetbegović of Bosnia and Herzegovina, President Milošević of Serbia are dead (President Milošević died in the custody of the International Criminal Tribunal for the Former Yugoslavia - ICTY - during the trial against him). Representatives of entities (at the same time representing Bosnian Serbs and Bosnian Croats) Momčilo Krajišnik (the President of the Assembly of the Republic of Srpska, representing Bosnian Serbs, who refused to initial the agreement in Dayton, so President Milošević had to do it instead of him) and Jadranko Prlić (the Minister of Defense and the Deputy Prime Minister of the Federation, representing Bosnian Croats, who initialed the agreement instead of Krešimir Zubak, President of the Federation), were also indicted by the ICTY.

The same or similar destiny affected most of regional chiefs of staff, ministers of defense, and even some

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ministers of foreign affairs. A few of them, who are still alive and at large, have been - almost without an exception - politically marginalized. Even Richard Holbrooke, not a local actor, but the chief American peace negotiator famous for his "bulldozer diplomacy",² has never become the Secretary of State, the position he expected and longed for. He has left diplomacy and now works in the private sector.

Is there a Dayton curse, and if there is, is it justified? Could and should have we done better in Dayton?

I am not sure about the curse, but ten years after, I firmly believe that we could and should have done better in Dayton. By "we", I do not refer only to the three constituent peoples of Bosnia and Herzegovina (Croats, Muslims/Bosniacs and Serbs), the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), involved as neighboring states both in hostilities and the peace talks, but also to the United States and other states members of the Contact Group (France, Germany, Russian Federation and United Kingdom).

Contact group members, apart from interests related to Bosnia and Herzegovina, also followed their specific interests, sometimes totally unrelated to the wellbeing of Bosnia and Herzegovina and its constituent peoples.³ The United States - as organizers of the conference and the key international player - were influenced in their decision making by various factors, some of them related to domestic (such as effects of various scenarios on forthcoming presidential elections), and some to foreign policy.⁴ High on their agenda was, for example, the influence of the Bosnian case on the enlargement of NATO towards East Europe and the redefinition of its role.⁵ Through their support of Muslims of Bosnia and Herzegovina, the US also wanted to be perceived as a reliable protector of pro-western Muslims and their countries around the world. The US involvement had been aimed to prevent the influence of radical Muslim countries and radical groups in Bosnia and Herzegovina, but also to prevent radicals from gaining popularity in Muslim countries worldwide since they took upon themselves the role of the defenders of Bosnian Muslims.

Finally, an important message had been sent that the United States are the only remaining superpower and that no serious international crisis can be resolved without them. It has been argued that reserved and cold reception of other peace plans preceding the Dayton Agreement on behalf of the US can be attributed to the issue of international prestige.⁶ Some other Contact Group members involved in Dayton proximity talks were obviously also concerned with their public appearance. The Russian Federation wanted to show that in spite of its weakening, it has remained the second world power, and that its protégés can continue to count on its support. Although there were some common interests of the EU countries in the face-saving regarding their competence

to successfully resolve problems in their own backyard and in preventing further refugees from fleeing and settling in the EU countries, some interests of individual countries were quite different. Some of them, for example, wanted to justify their permanent membership in the Security Council, while the others wanted to show just the opposite: that their time had come.

In pursuing country specific agendas, Dayton has for some of them been more, and for some of them less successful. When I say that we could and should have done better in Dayton, I refer to the wellbeing of Bosnia and Herzegovina and its constituent peoples.

There is no doubt that the Dayton agreement has been instrumental "To end a war", as Richard Holbrooke entitled his book on Bosnian peace negotiations.⁷ After almost four years of sufferings, this was an undutiful achievement.⁸ But, on the other hand, some other aspects of the Dayton Peace Agreement seem far less impressive: today, ten years after Dayton, from an economic, political and a security point of view, Bosnia and Herzegovina is still not a self sustainable state, and it still depends on a constant international support. Impressive financial resources invested in Bosnia and Herzegovina have mostly been spent unproductively, on national and international bureaucracy.

2. What was wrong with Dayton?

Dayton was envisaged to be a pragmatic solution. When the US finally decided to get involved in Bosnia and Herzegovina, they remained reluctant to engage their own troops (especially in combat activities on the ground), so they combined diplomatic efforts with the support of local military activities related to the peaceful settlement. After Croatian forces, following a military success in Croatia, together with Bosnian Croat and Muslim forces, liberated approximately half of the territory of Bosnia and Herzegovina, previous shuttle diplomacy was succeeded by proximity talks.⁹ Representatives of the three constituent peoples of Bosnia and Herzegovina, of Croatia and the FRY were summoned in Dayton by the United States.¹⁰ Diplomatic offers to delegations were not based on the perception of justice, but on the perception of their bargaining power. Sticks and carrots have been extensively used to push all sides into the agreement. However, it is obvious now that the arrangement easiest to push through and to be approved by all sides has not provided for a sustainable model for Bosnia and Herzegovina.¹¹

But it was not only the institutional model for Bosnia and Herzegovina that was wrong. Its implementation, especially during the first years after its adoption, lacked both enthusiasm and support of the local population, and commitment and adequate authority on behalf of the international community and its representatives.

2.1. Model

Let us first examine the model. The basic problem with the model was that it was based on war time realities instead of forward looking. It was also too complicated, bureaucratic and inefficient. Finally, it was imposed on the three constituent peoples and it lacked local support and legitimacy.¹²

Creating two highly independent entities for the three constituent peoples of Bosnia and Herzegovina was a bad starting point. In fact, many of the problems with the elaboration of the model have their origin in this initial contradiction.

The Republic of Srpska has been created during the war. Its territory was controlled by Bosnian Serb forces, and most of the non-Serb population who had lived there prior to the war (mostly Muslims and Croats) were ethnically cleansed. For Bosnian Serbs (supported by Belgrade) preserving the Republic of Srpska had been a precondition for any peace negotiations. During the shuttle negotiations prior to Dayton, the Republic of Srpska had already been granted the status of a highly independent (con) federal unit and 49% of the territory.¹³

The other entity, the Federation, was also not a traditional, but a war construct. The Federation was created as an American sponsored war alliance between mutually mistrustful Bosnian Croats and Muslims.¹⁴ The tragic conflict between Bosnian Croats and Muslims during which they were fighting each other over the remaining territory (instead of facing the Serbian aggression side to side) finally stopped. The war alliance was successful, but on a long run - Croats and Muslims had different agendas.

Because of the international fear of disintegration of Bosnia and Herzegovina and its negative consequences for the regional peace and security,¹⁵ Bosnian Croats were not allowed to preserve their separate entity, which was also established during the war under the name of Hrvatska Republika Herceg Bosna (Croatian Republic of Herzeg Bosnia). The Republic of Croatia first supported, and then, after international pressure, contributed to the dismantling of Herceg Bosna. The interests of Bosnian Muslims (as the largest ethnic group), both in the Federation and in Bosnia and Herzegovina, have been best protected by their number (so they favored "one man, one vote" principle and the majority rule). Bosnian Serbs protected their interests through a separate entity under their control, the Republic of Srpska, with a quasi state status. Bosnian Croats, by far the smallest constituent people in Bosnia and Herzegovina, when they learned that their entity will not be tolerated, in order to protect their interests and equality, had to insist on equal representation and consensus decision making of all constituent peoples (both in the Federation and Bosnia and Herzegovina). Bosnian Serbs also supported equal representation and consensus decision making in all issues falling within the com-

petence of central authorities of Bosnia and Herzegovina.

The system that was created under the mentioned constraints has proved to be complicated, ineffective and very expensive.¹⁶ In addition to political problems in reaching a consensus, four levels of administration (below the level of entities there are cantons and communes) also impose a heavy bureaucratic burden. Altogether, in Bosnia and Herzegovina, its entities and cantons, there are 14 constitutions, 14 governments and 180 ministers. Such a high level of decentralization without an efficient system of democratic control facilitates patronage and corruption. The system is also very expensive: for example, as the High Representative Ashdown pointed out, as much as 70% of the taxes in the Federation go for salaries of politicians.

Billions of dollars of foreign aid poured in Bosnia and Herzegovina have not brought on any significant economic revival of the country.¹⁷ In fact, most of the money has been spent on national and international bureaucracies, and on buying only short-term stability.¹⁸

2.2. Implementation

The model designed for Bosnia and Herzegovina in Dayton obviously had many shortcomings, but its inadequate implementation also significantly contributed to the overall bad results. The Dayton Agreement at last brought a lasting peace and has given some time to build on it, and to improve the constitutional framework in order to make the state more viable. However, this did not take place for two main reasons: the local population, strongly divided along the ethnic lines, could not agree on the necessary improvements of the system, while the international administration lacked clear commitment and long-term planning of its activities.

Although the leadership of all three ethnic groups in Bosnia and Herzegovina accepted the Dayton Peace Agreement, they did it under pressure. They disliked at least some aspects of the agreement they had to accept, and therefore blocked their implementation whenever they could. It should not come as a surprise that an ethnically divided local population could not agree on a further development of the institutional framework for Bosnia and Herzegovina: after all, until recently they were fighting each other. Ending the conflict without winners and losers might have facilitated the acceptance of the Dayton Peace Agreement, but it also prolonged the existence of mutually incompatible views that have led to the conflict itself.¹⁹ Proponents of mutually incompatible views have been systematically blocking each other in any attempt to seriously change the system. Principles of equal representation and consensus decision making successfully prevented interest domination of one ethnic group over the other, but also blocked every attempt to change the system and make it more efficient.

The international community and their representatives involved in the implementation of the Dayton

Agreement also share their part of the responsibility. The international actors involved, afraid of the reaction and public opinion in their own countries, never set up a realistic framework for peace-building and state-building activities in Bosnia and Herzegovina.²⁰ Although it has been obvious from the outset that these activities require a long-term presence, they have been presented as a relatively short time limited operation. This hypocrisy negatively reflected on rational planning of activities, and timing of the transfer of powers from international administration to the local one.²¹

The international administration in Bosnia and Herzegovina was not explicit that it would stay until their job was done and until Bosnia and Herzegovina became a sustainable state. Lack of such a clear commitment encouraged those who opposed the implementation of Dayton and the sustainability of Bosnia and Herzegovina.²² Furthermore, the hesitation of international troops to apprehend indicted war criminals, especially Karadžić and Mladić, left the impression that foreigners would be withdrawing soon, and that old warlords could regain their power.

A weak start of the international administration, decentralized and not sufficiently coordinated implementation activity of multiple international organizations and their representatives as well as local opposition to the implementation of the Dayton Agreement, caused a paradox: over time powers of the High Representative was increasing, while the powers of the local population was decreasing. At first, international administration was shying away from concentrating power in their hands: it would have implied too much responsibility and it did not seem conducive to the early exit strategy. The situation demanded a completely different approach: local opposition to the implementation of the Dayton Agreement and an inefficient model of decision making were threatening to create such a mess in Bosnia and Herzegovina that finally powers of the High Representative had to be significantly increased. So, instead of concentrating sufficient power to lead the process of implementation in the right direction, and then gradually transferring the power to the local population, the process in BiH was just the opposite. Such an inverse process of the transfer of power was certainly not the best way to progress towards sustainability of the country and its self government. The initial lack of credibility of the High Representative and its administration required afterwards a much higher concentration of power in order to restore authority, than it would have initially been necessary. In exercising their enlightened absolutism, the High Representatives even fired democratically elected officials and prohibited political parties when they estimated that their activity was harmful for the implementation of the Dayton agreement.²³ In many respects, such a behavior was counterproductive and strengthened nationalistic sentiments instead of weakening them.

3. What to do?

The constitutional framework designed in Dayton as Annex 4 to the Framework Agreement has worn out its benefits (ending of the war, providing at least formal acceptance of the Agreement by all sides). Its shortcomings are clearly visible (especially the expensive and ineffective decision-making). It is hard to imagine Bosnia and Herzegovina as a sustainable state with such an institutional framework. The international exit strategy is already being implemented, but it is not clear whether the local population is ready for the full transfer of power, and capable to successfully take over full administration of their own country. The negotiations on the Stabilization and Association Agreement with the EU have started, but there are frank and friendly warnings coming from the EU Commission, that if a more efficient state model is not adopted in Bosnia and Herzegovina, they might last forever.

This might be a watershed for Bosnia and Herzegovina. If the EU carrots are attractive enough, perhaps a consensus on a more efficient model will emerge. Unfortunately, the EU has reduced the number of imminent carrots: pre-accession funds are now much thinner for the newcomers than they used to be. However, the importance of a clear European perspective for Bosnia and Herzegovina is great. Accession to the EU along with the neighboring states (of course, not simultaneously, but when conditions are fulfilled in each of them), represents the best answer to the key problems of this country. Borders between the same ethnic groups living in different states after dissolution of the former Yugoslavia would become softer, facilitating cooperation without threatening the integrity of the country. Minority ethnic groups, no matter the country, entity or canton they live in, would be guaranteed a high level of protection of their rights. Finally, in Bosnia and Herzegovina the scope of common regulations and policies for all EU countries would reduce the extent of questions that have to be agreed upon within the country and help to avoid unnecessary confrontations. A stable institutional framework would also create a more favorable investment climate.

The recent proposal of the Bosnian Catholic Bishops' Conference for the new and more efficient model of state organization (that promotes interests of Bosnian Croats, but also of Bosnia and Herzegovina and all of its citizens), is encouraging. The essence of the proposal is a transfer of power from entities to central and local levels and a reduction from four to three levels of state administration.²⁴ The only serious opposition to such a transformation comes from the Republic of Srpska. However, this is enough to block the consensus of all constituent peoples, necessary for any major institutional change.

If EU carrots do not work for Bosnia and Herzegovina, it is quite likely that sticks will be used. But, even that would not be the worst. The worst case scenario is that the international community gives up, and that its representatives withdraw from Bosnia and

Herzegovina before it reforms its institutional framework and becomes sustainable. The consequences, both for Bosnia and Herzegovina and the broader region, could be very serious.²⁵

Have we learned anything from the Yugoslav experience? In fact, if we compare the negative factors that have facilitated the brake-up of former Yugoslavia with the present situation in Bosnia and Herzegovina, there are unpleasantly many similarities.²⁶ They include: recession and a high levels of unemployment, a division line between religions (Islam, Catholic and Orthodox) going through the country, no single ethnic group constituting the majority of population, war inflicted traumas, a low level of economic integration, a highly expensive, slow and inefficient constitutional model based on equal representation of constituent peoples, consensus decision-making in central state organs, and a low level of identification of the majority of population with their country and of support to its institutions.²⁷

What Yugoslavia missed, and what keeps Bosnia and Herzegovina together, is a strong international pres-

ence and support. I firmly believe that they should remain until Bosnia and Herzegovina develops a rational and efficient state model and becomes integrated into the EU (together with the rest of the region, and especially the neighboring states). Phasing out should be clearly linked to the progress in these activities. Let us not repeat the same mistake that have been made in the implementation of the Dayton Agreement: let us be clear about the long-term goals and perspectives and let us rationally plan ahead. A *de facto* international protectorate, with governmental powers undemocratically concentrated in the High Representatives as an unelected international official, is obviously annoying to the majority of population in Bosnia and Herzegovina. But before the transfer of power, this system must have a sustainable local alternative. Although at first sight it does not seem that way, it is the fastest and safest way to the democratic and prosperous Bosnia and Herzegovina.

NOTES

1 This article is based on a presentation delivered by the author at the international conference Dayton – ten years after. Conflict resolution and co-operation perspectives, Sarajevo, 29.11. – 1.12.2005.

2 Holbrooke's "bulldozer diplomacy" has definitely been more efficient than the attempts of his peace negotiating predecessors. Of course, he had United States behind him, but his personal negotiating style and strategy also made a difference. On comparison between Richard Holbrooke and David Owen and their negotiating styles, see Van Es, 2002. On his use of simplification strategies to facilitate negotiations, see Watkins, 2003. Excluding other members of Contact group (who were represented by the US) and Bosnian Serbs and Croats (who were represented by Croatia and Serbia) from direct negotiations, made negotiations more manageable, but possibly also made implementation of the negotiations more difficult (see Cousens and Cater, 2001).

3 See Šimonović, 13.

4 For interesting report on the background of the US Bosnian policy, see V.M. Daalder, 2000.

5 For Bosnia and Herzegovina non-related interests in Dayton, see Šimonović, 1996.

6 See Wiberg, 2005, 17. Out of numerous international peace plans prior to Dayton, about half of them were rejected by Bosnian Serbs, and half by Muslims (Croats were the only to – sooner or later – accept all peace plans). It may be true that Muslims rejected some peace plans after receiving signals from the US that they deserved, and could get more in the future than offered by the plan.

7 See Holbrooke, 1998. It is interesting that at least some major Dayton players – such as President Tudman – despite some contained criticism against him and the Republic of Croatia – regarded Holbrooke's book (with only three minor objections, which he conferred to Holbrooke through me), as fully accurate and insightful.

8 Although data vary significantly (UNHCR, International Crisis Group and Bosnian official sources), it is likely that in Bosnia and Herzegovina there were over two million refugees and inter-

nally displaced persons, and over one hundred thousand dead.

9 On the role of Croatian military successes and military cooperation with Bosnian Croats and Muslims, but the United States as well, see Raguž, 2005. Raguž points out that without successes of the Croatian Army, Dayton Agreement would not have been possible.

10 Other Contact group members were also present in Dayton during the peace talks on the level of political directors of the ministries of foreign affairs, but their role was more or less marginal, causing great frustrations.

11 It is possible that it was not only the easiest, but the only arrangement three sides could agree upon. If this is the case, would it not have been better to impose a viable system, to be replaced by the local, viable, democratic agreement at a later stage, when conditions would be ready? On problems caused by manipulating with the sovereignty of Bosnia and Herzegovina instead of proclaiming straight forward protectorate, see Woodward, 2001.

12 It is at least disputable whether foreigners are successful constitution makers. Jeremy Bentham strongly argued that being a foreigner (and not having specific interests or agenda) represents an advantage. However, experience indicates that, for local population, it is usually difficult to identify with a foreign written constitution (see Feldman, 2005, and Simon Chesterman 2005a). It should have been predicted that the model adopted under strong international (especially US) pressure, including many compromises and even contradictory solutions, would be difficult to implement: all sides were motivated to revise or obstruct the settlement to which they have pledged themselves. Without strong international leadership it simply could not have worked.

13 See Holbrooke, 1998.

14 See Granić, 2005, 87-101.

15 For majority of international actors, division of Bosnia and Herzegovina along ethnic lines was not an option for two main reasons: dispersion of various ethnic groups throughout territory with significant pockets of various ethnicities, and the fear of a frustrated and potentially radicalized Muslim state in Eu-

rope. However, entities (one of them, the Federation, mostly Muslim and Croat, and the other, the Republic of Srpska, predominantly Serb) were allowed to establish "special relations" with neighboring Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

16 Owen treats institutions based on equal representation and consensus decision making as traditional elements of Yugoslav system. (See Owen, 209, 215). It is true that such institutions existed in former Yugoslavia, but they rather reflected the same problem – willingness to limit central state powers and prevent majority rule – than representing efficient managerial solution.

17 International Crisis Group has estimated that Bosnia's economy is deeply dependent upon donor support, and were it not for direct and indirect donor support (which may account to as much as 25% of GDP), economic growth would probably be negative.

18 On the negative impact of institutional model on economic performance, see Adam Raviv, 2005.

19 The ICTY's potentially positive role in establishing the truth about the conflict has been greatly diminished by the lack of commitment to apprehend Radovan Karadžić and Ratko Mladić. I explicitly raised that issue at the fifth anniversary of Dayton Peace Agreement, held in Dwight Patterson base in Dayton, Ohio, and everybody, including military officers in command in Bosnia seemed to agree that it negatively reflected on peace efforts and that this mistake should be corrected. It is outrageous that various political considerations insured them impunity the whole decade after the end of conflict.

20 On these activities, especially aimed at establishment of rule of law, see Chesterman, 2005b.

21 While military schedule contained in the Dayton peace Agreement was very detailed, there was almost no political timetable (accept nine month deadline for national elections, which was

rather unrealistic for them to be fully democratic, and primarily served as a signal of the early exit strategy), see Cousens, 2001, 44.

22 The role of SFOR was also ambiguous: it has been authorized, but not obliged to support civilian implementation.

23 I have had an opportunity to discuss problems of Bosnia and Herzegovina and of their personal role with all of its high representatives, and it is quite clear that enlightened absolutism that they were exercising has been emerging out of situation, rather than from their personalities (although some of them have been enjoying such a role more than the others).

24 For another set of suggestions on how to reform constitutional framework in order for the system to become more efficient, see Venice Commission, 2005. Although they have many similarities, Venice Commission does not sufficiently take into account that in Bosnia and Herzegovina crucial is the protection of the three ethnic groups, not the recently (and violently) created entities.

25 Although reemergence of active hostilities does not seem likely, it cannot be excluded. But there are also other threats: such as Bosnia becoming a safe haven for criminal and possibly terrorist activity (see ICG report, 158).

26 For such a comparison see Haken Wiberg, 2005, 24-25.

27 International soccer matches are a good indicator how people really feel. Bosnian Croats and Serbs tend to cheer for the national teams of the Republic of Croatia and Serbia and Montenegro when they play a match against Bosnia and Herzegovina. Public opinion surveys show that majority of population views Dayton Peace Agreement unfavorable and as a foreign imposition. They also indicate perception of lack of perspective: most of young people would leave the country if they were given the opportunity to live elsewhere.

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